

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
KENNETH URHEIM)

For Appellant: Dennis T. Kira
Dennis T. Kira and Associates.

For Respondent: Terry L. Collins
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Kenneth Urheim for refund of personal income tax in the amounts of \$594.00 and \$595.00 for the years 1975 and 1976, respectively.

Appeal of Kenneth Urheim

The sole issue presented by this appeal is whether appellant's claims for refund are barred by the statute of limitations set forth in section 19053 of the Revenue and Taxation Code.

Appellant filed his California **personal** income **tax** returns for the years 1975 and 1976 on July 24, 1981. On those returns, appellant claimed that the total of his withholding and renter's **credits** exceeded his tax liability by **\$594.00** and \$595.00 for the years in issue, respectively, **and** requested refunds in those amounts. Respondent subsequently notified appellant that his claims for refund had not been filed within the period prescribed by section 19053 of the Revenue and Taxation Code and that, consequently, they were barred by the statute of limitations. Appellant's protest of respondent's determination has resulted in this appeal.

In pertinent part, section 19053 provides as follows:

No- credit or refund shall be allowed or made after four years from the last day prescribed for filing the return or after one year from the date of the overpayment, whichever period expires the later, unless before the expiration of the period a claim **therefor** is filed by the taxpayer, . . .

Respondent contends that the above quoted language of section 19053 is mandatory and that under its clear terms the latest dates on which appellant could have filed the subject claims for refund were April 15, 1980 and April 15, 1981, i.e., four- years from the last day prescribed for the filing of his 1975 and 1976 returns, respectively. Appellant, while acknowledging that his claims **for** refund were not filed within the period set forth in section 19053, argues that respondent's denial of his claims is unjust under the circumstances because there existed "reasonable cause" for his failure to file his refund claims in a timely manner. Specifically, appellant asserts that he acted in **reliance** upon **his** tax preparer, who misrepresented himself as an attorney and certified public accountant, and who allegedly told appellant that there was no need to file his returns before any **specified** date.

In numerous prior appeals we have **had** occasion to deal with the issue presented by 'this appeal'. (See, **e.g.**, Appeal of Wendell Jenkins, Sr., Cal. St. Bd. of Equal., **June** 23, 1981; Appeal of Manuel and Ofelia C. Cervantes, Cal. St. Bd. of Equal., Aug. 1, 1974.) In conformity with the interpretation given to comparable federal law, we have consistently held that the statute of limitations, set forth in section 19053 must be **strictly** construed and that a taxpayer's failure, for whatever reason, to file a claim for refund **within** the statutory **period** bars him from doing so at a later date. There is no reason to reach a different conclusion in the instant appeal.

